MT LEGISLATIVE HISTORY

Chapter 332 1985

Bill (H) 738 S _____ Original bill & hist. ✓C

H. Committee on Judiciary		S. Committee on Public Health, Welfare & Safety	
Hearing Date(s) Feb 19	✓C	Hearing Date(s) Mar 08	✓C
_____	___C	Mar 13	✓C
_____	___C	Mar 20	✓C
_____	___C	_____	___C
Date Out Feb 19	✓C	Mar 20	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 738

INTRODUCED BY ADDY, KEYSER

IN THE HOUSE

February 9, 1985	Introduced and referred to Committee on Judiciary.
	Fiscal Note requested.
February 14, 1985	Fiscal Note returned.
February 20, 1985	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 21, 1985	Second reading, do pass.
February 22, 1985	Considered correctly engrossed.
February 23, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

March 4, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
March 21, 1985	Committee recommend bill be concurred in. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Ayes, 48; Noes, 2.
	Returned to House.

IN THE HOUSE

March 27, 1985 Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

INTRODUCED BY HOUSE BILL NO. 738

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT BY CLARIFYING THE DEFINITIONS OF "HEALTH CARE FACILITY", "MALPRACTICE CLAIM", AND "PHYSICIAN"; CLARIFYING THE ALLOCATION OF ASSESSMENTS AND DETERMINATION OF ASSESSMENTS; PROVIDING FOR A LATE FEE FOR DELINQUENT ASSESSMENTS; CLARIFYING THE COMPOSITION OF THE PANEL; CLARIFYING THE TOLLING OF THE STATUTE OF LIMITATIONS AGAINST PARTIES NOT PARTIES TO THE CLAIM AND PROVIDING FOR DISMISSAL OF CLAIMS AND THE RUNNING OF THE STATUTE OF LIMITATIONS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-301, 27-6-303, 27-6-401, AND 27-6-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Health care facility" means a facility (other than a university, college, or governmental ~~hospital or~~ infirmary) licensed as a health care facility under Title 50, chapter 5.

(2) "Health care provider" means a physician or a health care facility.

(3) "Hospital" means a hospital as defined in 50-5-101.

(4) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical treatment, lack of medical treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the ~~patient~~ claimant, whether the ~~patient's~~ claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(5) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(6) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to

LC 1486/01

INTRODUCED BILL HB 738

practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services, whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3."

Section 2. Section 27-6-206, MCA, is amended to read:

"27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers~~,-except-physicians-not~~

~~engaged-in-the-private-practice-of-medicine~~. The amount of the assessment must be annually set by the director~~,-who shall-allocate-a-projected--cost~~ and must be apportioned among physicians, hospitals, and other health care ~~facilities~~ providers by group. ~~The-amount-of-the-assessment for-an-individual-physician,-hospital,-or-other-health--care facility--must-be-that-portion-of-the-total-assessment-which bears-the-same-relationship-to-the-total-assessment--as--the number--of-claims-against-such-physician,-hospital,-or-other health-care-facility-bears-to-the--total--number--of--claims against---physicians,---hospitals,--and--other--health--care facilities-that-have-been-filed-with-the-panel--since--April 19,--1977,--as--that--total-number-of-claims-is-shown-in-the annual-reports-of-the-panel.--However,-the-assessment-for-an individual-hospital-must-also-be-determined-by-dividing--the total--percentage-of-the-assessment-for-all-hospitals-by-the total-number-of-hospital-beds-existing-at-the--time--of--the assessment--and-multiplying-the-result-by-the-number-of-beds in-the-hospital-to-be-assessed.~~ As to the group of all physicians, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. , The total number and group of health care providers brought before the panel must be determined

from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of health and environmental sciences. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians' annual registration fees are due under 37-3-313. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of

commerce has under 37-3-313 in connection with physicians' annual registration fees."

Section 3. Section 27-6-301, MCA, is amended to read:

"27-6-301. How cases submitted. Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the ~~patient~~ claimant or his attorney, to the director of the panel."

Section 4. Section 27-6-303, MCA, is amended to read:

"27-6-303. Amendments to application. ~~Any--amendments~~ Amendments to the application ~~must~~ may be ~~filed-not-less than-14-days-prior-to-the-hearing-date~~ authorized by rule."

Section 5. Section 27-6-401, MCA, is amended to read:

"27-6-401. Composition of panel. (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. Six panel members shall sit in review of each case. Three panel members ~~from--the--health care--provider's--profession~~ who are physicians and three panel members ~~from-the-state-bar~~ who are attorneys shall sit in review of each case in which the claim is heard only against one or more physicians. If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health

care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.

(2) In those all other cases where--the--theory--of respondeat--superior--or--some--other--derivative--theory-of recovery-is-employed, two of the panel members shall must be chosen-from-the-individual-health-care-provider's-profession and physicians, one panel member shall must be chosen--from the--profession-of-the an administrator of one of the health care provider-named-a-respondent--as--employer,--master,--or principal facilities, and three panel members must be attorneys."

Section 6. Section 27-6-702, MCA, is amended to read:

"27-6-702. Tolling of statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review and as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action which might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period in a malpractice claim does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel chairman or from the

director upon the consent of the parties t
panel's final decision, whichever occurs f
in the permanent files of the panel an
upon the complainant and his attorney if h
by counsel, by certified mail."

NEW SECTION. Section 7. Effective
effective on passage and approval.

-End-

F I S C A L N O T E

Form BD-15

In compliance with a written request received February 9 19 85 , there is hereby submitted a Fiscal Note for H.B. 738 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 738 revises the Montana Medical Legal Panel Act by clarifying the definitions of "Health Care Facility", "Malpractice Claim", and "Physician"; clarifying the allocation of assessments and determination of assessments; providing for a late fee for delinquent assessments; clarifying the composition of the panel; clarifying the tolling of the statute of limitations against parties not parties to the claim and providing for dismissal of claims and the running of the statute of limitations.

FISCAL IMPACT:

None

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 14, 1985

FN8:I/1

HB 738

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY HOUSE

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 681	2/5/85	2/8/85 2/7/85	2/8/85			2/8/85			
HB 186	2/5/85	2/7/85 2/8/85	2/8/85			2/8/85			
HB 686	2/6/85	2/22/85 2/23/85	2/23/85			2/23/85			
HB 700	2/7/85	2/18/85	2/18/85			2/18/85			
HB 706	2/7/85	2/18/85	2/18/85	2/18/85					
HB 710	2/7/85	2/18/85	2/18/85			2/18/85			
HB 712	2/7/85	2/18/85	2/18/85			2/18/85			
HB 714	2/7/85	2/18/85 2/20/85	(Tabled 2/20/85)		(Sent out to floor		2/25/85)		
HB 341	2/7/85	2/16/85 (re-referred)	2/16/85	2/16/85					
HB 717	2/8/85	2/19/85	2/19/85			2/19/85			
HB 722	2/8/85	2/19/85	2/19/85			2/19/85			
HB 726	2/8/85	2/19/85	2/19/85	2/19/85					
HB 447	2/8/85	(referred back to committee) 2/18/85				2/18/85			
HB 738	2/9/85	2/19/85	2/19/85			2/19/85			
HB 742	2/9/85	2/19/85	2/19/85		2/19/85				
HB 744	2/9/85	2/20/85	2/20/85	2/20/85					

Use separate sheet for each action (Do Pass, Do Not Pass, etc.)

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 19, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, February 19, 1985 at 7:10 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 717: Rep. Steve Waldron, District #58, sponsor of the bill, appeared and offered testimony in support of the bill. This bill provides for the award of joint custody to parents when it is requested by both parents. Rep. Waldron said that the law is unclear as to exactly what joint custody is. Rep. Waldron further stated that in talking with a few attorneys on this issue, they informed him that joint custody, in cases where the parties are hostile towards each other, does not work very well. Consequently, he wrote the bill so that if both parties want the joint custody, then the court would award custody without order of preference according to the best interests of the child.

Nick Tomaski from Harlem, appeared and offered testimony in support of the bill. His written testimony was marked Exhibit A and attached hereto.

Bailey Molineux, representing the Montana Psychological Association and director of the Family Teaching Center, testified in support of the bill. He said that research is finding that joint custody is in the best interests of the children if certain conditions are met. The primary condition is if parents are able to cooperate.

There being no further proponents, Chairman Hannah asked if there were any opponents present to testify.

Anne Brodsky, representing the Women's Lobbyist Fund, spoke in opposition to the bill. She asked that the committee consider that custody cases are very individual ones, and that it is extremely difficult at present for one parent to obtain joint custody if the other parent opposes it. Most of all, the child's best interests should be the determining factor in any custody order. A copy of her written testimony was marked Exhibit B and attached hereto.

There being no further opponents, Rep. Waldron closed. He stated that this bill provides that the decision of joint

custody is left to the discretion of the court.

Rep. Krueger commented that he feels the bill would prohibit the court as an objective overseer. Following a few general questions, hearing closed on HB 717.

CONSIDERATION OF HOUSE BILL NO. 722: Rep. Jerry Nisbet, District #35, chief sponsor of the bill, testified. He said this bill deals with a 1939 statute which was designed to make people who make defamatory statements liable while not punishing an innocent radio broadcaster. Since 1939, there have been obvious changes in the communication world. This bill would simply extend that same provision to television and cable casters. The concern arose because Great Falls and Missoula are in the process of looking at some public access channels on the local cable systems. There may be a situation where a city or some other governmental entity might have some problems in that area.

Bob Vermillion, attorney from Great Falls, spoke in favor of HB 722. A copy of his written statement was marked as Exhibit C and is attached hereto.

Jerry Loendorf, representing the Montana Broadcasters Association, wished to go on record as supporting this bill.

There being no further proponents or opponents, Rep. Nisbet closed.

The floor was opened to questioning.

Rep. Addy wondered if Section 2 of the bill was a blatant infringement of the first amendment. Mr. Vermillion responded by saying that he feels the bill is doing just the opposite. He feels that it will encourage more freedom of expression.

There being no further discussion, hearing closed on HB 722.

CONSIDERATION OF HOUSE BILL NO. 738: Rep. Addy, District #94, chief sponsor of the bill, testified. This bill is a clarification of the Medical Legal Panel Act. Rep. Addy pointed out some of the changes that have been made which are indicated in the bill. He stated that the administrative remedy is really working well in that it has really cut down the number of lawsuits that have been filed in court.

Jerry Neely, representing the Montana Medical Legal Panel, testified in support of this bill. He prepared an explanation of the proposed amendments to the Montana Medical Legal Panel, and submitted the copies to the committee members. The explanation was marked Exhibit D and attached.

Bill Leary, president of the Montana Hospital Association, appeared in support of HB 738.

Rep. Keyser, District #74, also wished to appear as a proponent of this bill.

There being no further proponents or opponents, the hearing on HB 738 closed.

The floor was opened for questions.

Rep. Krueger was curious to know the reason for placing two administrators on the panel as opposed to two physicians. Mr. Neely said that the hospital association feels it is important that they have good representation on the panel. A lot of the time, the cases are not clear-cut medical matters as a surgery situation. He feels those administrators have a good comprehension of the medical problems that are involved. He further feels that it is important to get good, intelligent people who are willing to listen to these cases.

In response to a question asked by Rep. Montayne, Mr. Neely stated that nurses did not wish to be covered, and it would require their active interest to be included in the panel.

Rep. Eudaily was concerned with the language in subsection (4). He said it seems to him that the original purpose of setting up the panel was to take care of the situations between the health care provider and the patients. He wondered why we are moving into this other area. In response to Rep. Eudaily, Mr. Neely said the attorneys who represent certain individuals don't know whether they do or don't have to come before the panel. So they file it in the court, and the defense attorney moves for dismissal because it should be brought before the panel.

In response to a question asked by Rep. O'Hara, Mr. Neely said that 100 claims were filed in 1984. From 1977 to 1983, 264 claims have been filed against 280 physicians, 101 hospitals and two nursing homes. He further pointed out that these figures are increasing.

Rep. O'Hara asked who pays for the attorneys and physicians who sit on the panel. Mr. Neely said that their fees are paid out of the assessment funds.

There being no further questions, hearing closed on HB 738.

CONSIDERATION OF HOUSE BILL NO. 795: Rep. Compton, District #17, chief sponsor of the bill, testified. He informed the committee that the bill was requested by some immigration and naturalization and custom officers up on the United States-Canadian border.

There being no further proponents or opponents, Rep. Compton closed.

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 19, 1985

An executive session was called to order by Chairman Tom Hannah on Tuesday, February 19, 1985 at the hour of 12:15 p.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Rep. Miles who was excused.

CONSIDERATION OF HOUSE BILL NO. 17: The committee considered HB 17 with the newly proposed amendments. Rep. Hannah stated that the amendments are contrary to the title of the bill. Rep. Hannah moved that HB 17 DO PASS as is.

Rep. Mercer stated that he cannot support the bill with the amendments. He feels that by adopting the amendments, we would be going completely backwards as to where we are in Montana on this particular issue.

Rep. Keyser stated that HB 17 was requested by the Interim Subcommittee 2; however, the subcommittee did not vote unanimously to adopt this particular piece of legislation.

Rep. Hannah's motion for a DO PASS died without a second. Upon request of the committee, action will be delayed.

CONSIDERATION OF HOUSE BILL NO. 738: Rep. Hammond moved that HB 738 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. Mercer moved to place commas around "or from the director upon the consent of the parties to the claim" on pages 7 through 8. The motion was seconded by Rep. O'Hara and carried.

Rep. Mercer further moved the following amendments:

1. Page 7, line 8.
Following: "administrator of"
Strike: "one of"

Following: "the"
Insert: "same type of"

2. Page 7, line 10.
Strike: "facilities"
Insert: "facility"

The motion was seconded by Rep. Hammond, the question called, and the motion to amend carried unanimously.

Rep. Brown moved that HB 738 DO PASS AS AMENDED, The motion was seconded by Rep. Hammond and further discussed.

Rep. Eudaily expressed his opposition in allowing corporations to be broughtbefore the panel.

Rep. Hannah moved another amendment on page 2, lines 8 and 9 by reinstating the original language. Following further discussion, Rep. Hannah withdrew his motion to amend.

The question was called on the DO PASS AS AMENDED motion, and the motion carried with Reps. Eudaily, Hannah and Montayne dissenting.

CONSIDERATION OF HOUSE BILL NO. 17: Rep. Keyser moved that HB 17 DO PASS. The motion was seconded by Rep. Montayne. Rep. Grady moved that the proposed amendments be adopted. The motion was seconded by Rep. O'Hara and discussed.

Rep. Eudaily asked if the requirement of written notice was being eliminated, since the bill states that property is closed if the painted markers alone are present. Brenda Desmond, committee researcher, responded by saying yes, written notice is required; however, under section 4, if the person has a painted object, and if the written notice is no longer affixed to that object, a person still may be charged with trespass.

Rep. Eudaily stated that the inspection requirement should be changed to at least 15 days before the fishing and hunting season opens so that the public can learn that the property is closed before the season opens.

Rep. Hannah spoke against the amendments. He feels that the landowner has a fundamental right, and by adopting these amendments, a whole new bill would be required.

Rep. Keyser pointed out that the landowners are not happy with the present law, nor does he feel they will be happy with HB 17 with its proposed amendments.

Following further debate, the committee came to an agreement to move to suspend the rules on the floor and request a new bill.

ACTION ON HOUSE BILL NO. 717: Rep. Hammond moved that HB 717 DO PASS. The motion was seconded by Rep. Bergene.

STANDING COMMITTEE REPORT

February 19 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 738

FIRST reading copy (WHITE color)

GENERALLY REVISE MEDICAL LEGAL PANEL ACT

Respectfully report as follows: That HOUSE Bill No. 738

be amended as follows:

1. Page 7, line 8.
Following: "administrator of"
Strike: "one of"

Following: "the"
Insert: "same type of"

2. Page 7, line 10.
Strike: "facilities"
Insert: "facility"

3. Page 7, line 25.
Following: "chairman"
Insert: ","

4. Page 8, line 1.
Following: "parties" "claim"
DO PASS
Insert: ","

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

5. Page 3, line 4.
Strike: "and"
Insert: "or"

AND AS AMENDED
DO PASS

Chairman.

REP. TOM HANNAH

STATE PUB. CO.
Helena, Mont.

EXHIBIT D
2/19/85
HB 738

EXPLANATION OF PROPOSED AMENDMENTS: Montana Medical Legal Panel

Section 1. Definitions.

(1) "Health Care Facility". A Governmental "hospital" was inadvertently included as one of the exempt facilities under "health care facilities" in the last legislative changes. The new bill changes that. State and local hospitals licensed as health care facilities under Title 50, chapter 5 have always been treated as covered by the panel legislation, and would under the proposed amendment.

(4) "Malpractice Claim". Under the definition of "malpractice claim", the language of the statute has been broadened to include claimants other than patients, i.e. individuals that allege harm arising out of a malpractice act even though not the patient.

For example, a husband witnessing the death of a wife, with the wife's death being attributed to malpractice, creates a cause of action in the husband. Such a claim should be subject to the panel, or if not, at least made clear that patients and only patients can properly come before the Panel. The current langauge of the statute is ambiguous in this regard.

(6) "Physician". Under the definition of "physician", the language of the act has been clarified, by deleting the language in section 27-6-206(2) which exempts physicians from assessments when "not engaged in the private practice of medicine", and making more specific what that means.

The definition is broken down into physicians for purposes of assessments and physicians for purposes of whether they come before the panel. For assessment purposes, a physician is an individual not retired or employed full-time by the federal government who additionally has his or her principal residence or place of practice in Montana. For applicability of the Panel, it includes all individual physicians except full-time federal employees and those whose principal residence or place of practice is not Montana.

Additionally, entities which are in fact owned and operated by physicians, such as clinics, are clearly brought within the confines of the panel, a current practice. Additionally, physicians working as employees for hospitals are clearly subject to the assessment under the new legislation; the current language subjects itself to the argument that hospital employees are not engaged in the private practice of medicine.

Section 2. Funding.

(2) (Assessments) The current statutory language is subject to the interpretation that individual physicians and hospitals brought before the panel are responsible for the assessment, when the practice is to allocate that assessment amongst the physician and hospital population as a whole. The new language makes the matter more clear and provides more clear external standards for assessment determination.

(3) (Late Charges) The proposed legislation adds a late charge for delinquent assessments. Because of the late payment of assessments, the annual per physician and per bed assessment is substantially higher than it ought to be. Timely payment of assessments or a penalty for those paying late would allow reduction of the assessment by some $18,000 for 1985.

Section 3. How Cases Submitted. The proposed change conforms to the broadening of the type of claimant which can come before the panel, set out above.

Section 4. Composition of Panel. The current statutory language is vague and unclear as to the composition of the panel under all circumstances, e.g. single hospitals and multiple hospitals as sole parties defendant; single and multiple physicians as sole parties defendant; and multiple physicians and single hospitals or other health care facilities as parties defendant. The language proposed conforms to current practice.

Section 5. Tolling of Statute of Limitations. The current statute is unclear as to whether the statute does or does not toll as to those not parties to the panel, such as nurses, under circumstances where physicians in the same matter are brought before the panel. The proposed legislation clarifies this, providing for the tolling of the statute as to all those parties named in the application, whether proper health care providers before the panel or not.

The proposed legislation also permits the dismissal of the action by the panel chairman or director of the panel (if all parties consent) in a manner that will clearly start the statute of limitations running again. The current legislation is unclear in this regard.

CHAIRMAN--JACOBSON, JUDY
SECRETARY-GRAVELEY, ELAINE
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: M-W-F TIME: 12:30-2:30 P.M.

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0720	3/04	3/13	3/18 3/27	CONCUR AS AMENDED		3-27
BROWN, JAN			ESTALISHING A LONG-TERM CARE OMBUDSMAN			
HB0729	3/04	3/08		CONCUR		3-8
SCHULTZ, JAMES M.			ROLE OF, ADMISSION TO, AND DISCHARGE FROM MONTANA CENTER FOR THE AGED			
HB0730	2/22	3/18	3/23	CONCUR		3-23
COHEN, BENJAMIN R. (BEN)			REQUIRES THAT 5% OF CERTAIN FED. FUNDS BE SPENT FOR HOME WEATHERIZATION			
HB0737	3/04	3/13	3/16	CONCUR AS AMENDED		3-15
BERGENE, TONI R.			ADULT PROTECTIVE SERVICE TEAMS TO ASSIST OLDER PERSONS			
HB0738	3/04	3/08	3/13 3/20	CONCUR		3-20
ADDY, KELLY			GENERALLY REVISE MEDICAL LEGAL PANEL ACT			
HB0743	3/04	3/08	3/15 3/18	CONCUR AS AMENDED		3-18
MILLER, RON			SUBROGATION RIGHTS OF SRS - 3RD PARTY LIABILITY FOR MEDICAL BENEFITS			
HB0748	3/04	3/13		CONCUR		3-13
KITSELMAN, LES			ELIGIBILITY FOR STATE SERVICES TO DEVELOPMENTALLY DISABLED PERSONS			
HB0758	3/04	3/20	3/23 3/27	ADVERSE REPORT		3-27
WINSLOW, CAL			REQUIRE SCREENING COMMITTEES TO REVIEW CHILD PLACEMENT IN A CARE FACILITY			
HB0766	3/06	3/22	3/25 3/27 3/28	CONCUR AS AMENDED	FINANCE & CLAIMS	3-28
REAM, BOB			REMEDIAL ACTION FUND TO ALLEVIATE OR PREVENT WATER CONTAMINATION			
HB0783	3/04	3/11	3/27	ADVERSE REPORT		3-27
MILES, JOAN			MONTANA LONG-TERM CARE RESIDENTS' BILL OF RIGHTS ACT			
HB0798	3/05	3/20	3/27	ADVERSE REPORT		3-27
MILES, JOAN			PHYSICALLY DISABLED - SRS AUTHORIZED TO PROVIDE SERVICES - COMMUNITY HOMES			

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

MARCH 8, 1985

The meeting of the Public Health, Welfare and Safety Committee was called to order by Chairman Judy Jacobson on Friday, March 8, 1985 at 1:00 p.m. in Room 410 of the State Capitol Building.

ROLL CALL: All members were present. Karen Renne, staff researcher, was also present.

There were many visitors in attendance. See attachments.

DISCUSSION ON HOUSE BILL 465: This bill introduced by Stella Jean Hansen of Missoula is an act to require the Department of Health and Environmental Sciences to adopt rules requiring owners and operators of solid waste management systems to submit information on the location and contents of solid waste disposal sites to counties to record as part of their permanent land records; providing for the recording of such information by county health departments of sites known to them.

Karen reported that she had visited with a couple of county clerk and recorders and also Jim Leitner for the Department which informed her that this information will be recorded on the deeds and also that there is a packet of information on file regarding each piece of land which would also contain the information called for in this bill.

Senator Towe stated that he was unaware of any "packet" of information which is on file with the clerk and recorder at the present time which this information could be put with.

Senator Himsl stated that he did not feel someone else could place information on the deed.

It was decided to invite a clerk and recorder to a future meeting and have her explain or interpret their understanding of this bill.

CONSIDERATION OF HOUSE BILL 588: Representative Bud Gould of Missoula is the chief sponsor of HB 588. He gave a brief resume of the bill. This bill is an act to remove the requirement that next of kin must be notified when a patient is admitted to an alcoholic treatment facility.

Curt Chisolm, deputy director of the Department of Institutions, stood in support of the bill. He stated that this bill is a housekeeping bill in its finest form. HB 588 would accomodate those people who are incapacitated by alcohol.

Senator Newman asked about the mental disorders and the center. A patient must have had his or her problem under control for 90 days before being accepted at the center.

Representative Schultz closed.

ACTION ON HOUSE BILL 729: A motion was made by Senator Towe that HB 729 be given a BE CONCURRED IN recommendation from the Committee. Motion carried. Senator Himsl will carry this bill on the floor of the Senate.

CONSIDERATION OF HOUSE BILL 738: Representative Kelly Addy of Billings, the chief sponsor of House Bill 738, gave a brief resume of the bill. This bill is an act revising the Montana Medical Legal Panel Act by clarifying the definitions of "health care facility", malpractice claim", and "physician", clarify the allocation of assessments and determination of assessments; providing for a late fee for delinquent assessments; clarifying the composition of the panel, clarifying the composition of the panel, clarifying the tolling of the statute of limitations against parties not parties to the claim and providing for dismisall of claims and the running of the statute of limitations; and providing an immediate effective date.

All claimants must come before the Montana Medical Legal Panel before they can go before a district court. Hospitals and physicians seem to be the highest risk for malpractice claims.

Gerald Neely, an attorney from Billings, stood in support of the bill. He stated that as to the group of all physicians, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April of 1977. The assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment of all other health care facilities must be equally assessed against all other health care facilities.

Mr. Neely stated that HB 738 would make it more clear in the assessment of all health care providers.

Bill Leary, representing the Montana Hospital Association, stood in support of the bill.

With no further proponents, the chairman called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Himsl asked if there is a compelling reason for the immediate effective date. Mr. Neely stated that the panel would like to implement the change immediate if at all possible.

Senator Norman asked who is the director spoken of in the bill. Brian Zins, executive director of the Montana Medical Association is the director to which the bill refers.

Senator Norman asked if passage of this bill would assure that the budget costs could be controlled. Mr. Neeley stated that he felt that this would be the case.

Senator Norman asked Mr. Neely if he had any objections to putting a lid on the assessment. Mr. Neely said "no". However, he felt that it was figured in a fair manner.

Senator Newman asked how much the panel is paid. The Medical Panel which is made up of three doctors and three attorneys is paid $40 per hour each.

Senator Stephens stated that the cost of this is borne by the public. He asked if they had ever considered changing the panel and putting some of the public on the panel. Mr. Neely stated that this is not needed.

Senator Himsl asked if this board is subject to audit. They are subject to audit by the Supreme Court. Mr. Zins is both hired and fired by the Supreme Court also.

Senator Towe stated that it appears that the rates are too high.

Representative Addy closed. He stated that it would be fine with him to see the bill amended and then perhaps go to a conference committee.

Montana Medical-Legal Panel

2021 Eleventh Avenue, Suite 12, Helena, Montana 59601 — Telephone 443-1110

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FOR YOUR INFORMATION

March 11, 1985
Monday

M E M O R A N D U M

TO: EACH MEMBER SENATE COMMITTEE ON PUBLIC HEALTH, WELFARE, AND SAFETY - SENATORS: JUDY JACOBSON, CHAIRMAN; J. D. LYNCH, VICE CHAIRMAN; TOM HAGER; MATT HIMSL; TED NEUMAN; BILL NORMAN; STAN STEPHENS; AND TOM TOWE

FROM: G. BRIAN ZINS, EXECUTIVE DIRECTOR

Re: House Bill 738

Dear Senators:

Enclosed is specific information about the operations of the Montana Medical-Legal Panel to include financial and actual proceedings. We are hopeful this information will be very comprehensive and explanatory.

The Panel assessment is based upon claims; by statute, any surplus going towards reduction of a following year assessment. The Panel is very economical in its timely disposition of alleged malpractice claims. It relieves the overburdened court system and allows claimants, without charge, an informal atmosphere of experts to review their allegations.

We would be very happy to respond to any questions and provide any further information.

Your concern is indeed appreciated.

Very best wishes.

GBZ:le

cc: Karen Renne, Legislative Council Staff (W/Enclosures) 2

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CLAIMS BEFORE THE MONTANA MEDICAL-LEGAL PANEL THROUGH 1983

MONTANA MEDICAL LEGAL PANEL
2021 11TH AVE
HELENA, MT 50601

FEBRUARY, 1985

1. INTRODUCTION. The following is a report of closed claims before the Montana Medical Legal Panel from April, 1977 through December, 1983. The report on closed claims thru year 1984 will be available within two months.

All claims of medical malpractice against physicians, hospitals, and long-term care facilities must come before the Panel before proceeding to court.

A separate Panel of three attorneys and three health care providers reviews each claim and renders an advisory decision as to whether there is sufficient evidence of malpractice to warrant a jury trial. The result of the Panel's decision is not binding and the claimant may proceed to court at his or her option.

The Panel is and has been since its inception funded solely by assessments levied on health care providers.

There is no cost associated with filing a claim or obtaining the medical records of the case at hand, which the Panel collects and distributes to the parties.

The goals of the Panel are:

...Prompt encouragement of pre-lawsuit and pre-trial settlement of claims that have merit

...Prompt discouragement of lawsuits and trials of claims without merit

...Reduction of the cost of medical care by lowering the cost of definding claims through prompt resolution

...Reduction and prevention of incidents of malpractice by determining the "who, what, when and where" of malpractice incidents in Montana.

2. NUMBER OF CLAIMS BEFORE THE PANEL

During the period surveyed, there have been 264 claims filed by claimants against 280 physicians, 101 hospitals, and 2 nursing homes.

3. INCREASED CLAIMS BEFORE THE PANEL

At the national level, recent studies have indicated a substantial increase in the number of medical malpractice claims filed in the period 1979 - 1983. Nationwide that increase has been 114%, with the rate of increase at the 26% level in the West. American Medical Association, PROFESSIONAL LIABILITY IN THE 80's, October, 1984.

Increased claim filings has also been experienced by the Panel. From 1981 to 1983, the rate of increase was 140.5%. From 1982 to 1983 the number of claims filed increased by 14.1% and preliminary data for year 1984 indicates the rate of increase from 1983 to 1984 was in excess of 12%:

Year	Number Of Claims Filed
1981	37
1982	78
1983	89

4. EFFECTIVENESS OF THE PANEL. The effectiveness of the Panel can be guaged in terms of the number of claims that are disposed of, with or without settlement to the Claimant, without the necessity of suit or trial. It is the clear-cut cases -- either a clear indication of responsibility on the part of the health care provider or a clear indication of no responsibility -- that are subject to being properly removed from the court system.

A. Substantial Reduction In The Number Of Lawsuits.

During the two-and-one-half year period from July, 1967-December, 1969, there were 57 lawsuits filed against physicians in Montana. This was an average of 23 lawsuits filed per year, and during a period of time when the frequency of claims against physicians was not as great, and at a time when there were fewer physicians.

Of the 383 health care providers who have been brought before the Panel, the results as to 237 of them has been tracked after the claim left the Panel.

Suit has been filed against 82 physicians or at the rate of 12 lawsuits per year. This represents a decrease of nearly 49% in the number of suits filed under circumstances of more claims and more physicians. Stated another way, there were nearly 100% more suits filed in the period before the Panel that after it became operational.

Suit has been filed against 27 hospitals during the period of this report. No earlier comparative figures are available.

B. Substantial Reduction In The Number Of Trials

Prior to implementation of the Panel, there were approximately 8 trials per year in Montana for medical malpractice against physicians. For a period comparable to the Panel's existence, this would indicate an expected 56 trials to have taken place.

Of the 237 physicians surveyed, against whom claims were brought, only 3 cases have gone to trial. This number will increase as the balance of the claims are surveyed, but not markedly. It is anticipated that in the long term, the average number of trials per year will be between 1 and 2.

Of the hospitals surveyed, 1 case had gone to trial.

C. Substantial Increases In Settled Or Withdrawn Claims

The reduction in litigation and lawsuits has been brought about by the substantial numbers of claims which are either settled by payment of money to the claimant, or just not further pursued by the claimant.

Nearly 30% of the claims filed against health care providers have been settled or withdrawn by the claimant before the claim reached the hearing stage at Panel.

Claims against 163 physicians have been withdrawn by the claimant or settled with money to the claimant after the claim has gone thru the Panel. Claims against 60 hospitals and 2 nursing homes have been withdrawn by the claimant or settled with money to the claimant after the claim has gone thru the Panel.

D. High Correlation Between Panel Results And Ultimate Outcome Of The Claim.

The impact of the Panel on the parties can be measured by looking at the relationship between what the Panel recommends and what the ultimate outcome of the claim is.

There exists a high correlation between the unanimous decisions of the Panel and the ultimate outcome of the claim.

Where the Panel held for the Physician, 82% of the Physicians had post-panel outcomes which were favorable. Where the Panel held for the Claimant, 94% of the Claimants had post-panel outcomes which were favorable.

Where the Panel held for the Hospital or Nursing Home, 71% of them had post-panel outcomes which were favorable.

There also exists a high correlation between the recommendation of the Panel and whether suit is or is not later filed.

Where the Panel result was for the Physician, no suit was filed as to 106 Physicians and 35 suits were filed. That is to say, the Panel results were followed 75% of the time as to suit-filing.

Where the Panel result was for the Health Care Facility, no suit was filed as to 46 Hospitals and Nursing Homes and 15 suits were filed. That is to say, the Panel results were followed in excess of 75% of the time.

5. DISPOSITION OF CLAIMS

Depending upon whether Panel results or ultimate results are measured, Claimants were successful as to between 22% -34% of the Physicians brought before the Panel and as to between 19% - 35% of the Health Care Facilities brought before the Panel.

As to claims withdrawn prior to Panel Hearing resulted, claimants received settlement as to 19% of the health care providers involved.

The above data provides support for the conclusion that approximately 3/4 of the claims brought against Physicians, Hospitals, and Nursing Homes do not have sufficient evidence of actual malpractice to warrant a jury trial. On the contrary, the figures also indicate that malpractice sufficient for a jury did exist as to 1/4 of the health care providers.

To the extent that these claims can be disposed of by way of settlement or non-pursuit, all parties are benefited.

	Percentage Of Health Care Providers
Result Favorable To Claimant	
At Panel	
As To Physicians	22.1%
As To Facilities	19.4%
Subsequent To Panel	
As To Physicians	33.7%
As To Facilities	34.9%

6. ADDITIONAL INFORMATION ON CLAIMS BEFORE THE MONTANA MEDICAL LEGAL PANEL

A. Total Claims

During the period surveyed, there have been 264 claims filed by claimants against 280 physicians, 101 hospitals, and 2 nursing homes.

These claims have been against 230 different physicians; 50 of the physicians had more than one claim filed against them. Similarly, 32 different hospitals and nursing homes have had claims filed against them; 8 hospitals have had more than one claim filed against them.

B. Repeated Claims Against Physicians and Hospitals

Physicians with more than one claim against them account for 35.3% of the total claims against physicians. Three physicians have had 4 claims filed against them; five have had 3 claims; and thirty-six have had 2 claims.

Hospitals with more than one claim against them account for 81.6% of the total claims against hospitals. The number of multiple claims against individual hospitals ranges from 2 to 18.

C. Claims Against Physicians By Specialty

The specialties with the highest absolute number of claims against them are: Family practice; General, Thoracic, and Cardiovascular Surgery; Obstetrics and Gynecology; Orthopaedic Surgery; Internal Medicine; and Radiology.

Of these groups, each except Internal Medicine and Radiology have had claims disproportionate to the number of physicians in the specialty.

D. County Of Incident

The counties with the highest frequency of incidents are: Cascade, Flathead, Gallatin, Lewis & Clark, Missoula, Silver Bow, and Yellowstone.

E. Nature Of Panel Votes.

Of the claims which went to hearing involving 300 health care providers, only as to 13 of those providers or 4% did a tie result in the voting. Fully 71% of the voting was by unanimous ballot of the lawyers and providers on the Panel.

The above data provides a strong basis for concluding that the Panel is not weighted one way or the other by the presence of health care providers reviewing the claims along with the attorneys, and that an impartial result is most frequently obtained. Only as to 4% of the claims is is possible for there to have been an attorney-health care provider split, and it may not have even occurred in these instances.

Gerald J. Neely
Counsel To Montana
Medical Legal Panel

APPENDIX OF DATA - Claims Required To Be Heard By Panel - Claims Closed 1979-1983

1. BY PANEL YEAR: Number of Claims Open At the Start of The Year, Filed During The Year, Withdrawn By Settlement or With No Settlement During The Year, Heard During The Year and Open At Year End.

YEAR	OPEN-ST	CLMFILED	WITHDRN	HEARING	OPEN-END
1978	0	5	0	0	5
1979	5	24	4	12	13
1980	13	31	2	24	18
1981	18	37	7	33	15
1982	15	78	12	43	38
1983	38	89	16	62	49
	89	264	41	174	138

2. BY YEAR OF INCIDENT: Number Of Claims Filed In Each Calendar Year

INCDYEAR	YRFL1978	YRFL1979	YRFL1980	YRFL1981	YRFL1982	YRFL1983	Total
1969	0	0	0	0	1	0	1
1975	0	0	0	0	0	1	1
1976	0	0	0	0	0	1	1
1977	4	10	12	7	13	0	46
1978	1	11	7	11	8	4	42
1979	0	3	11	6	17	4	41
1980	0	0	1	12	12	36	61
1981	0	0	0	1	17	21	39
1982	0	0	0	0	10	17	27
1983	0	0	0	0	0	5	5
	5	24	31	37	78	89	264

3. By Calendar Year: Number of Physicians, Hospitals, Other Facilities Wi Claims, and Total Claims

YEAR	#PCLAIMS	#HCLAIMS	#OFCLAIM	THCPCLMS
1978	6	5	0	11
1979	31	11	0	42
1980	33	15	1	49
1981	53	18	0	71
1982	107	36	1	144
1983	50	16	0	66
	280	101	2	383

4. By Calendar Year: Physicians, Hospitals, And Other Facilities As a Percentage of Total Health Care Providers With Claims

YEAR	%PWTHCLM	%HWTHCLM	%OFWCLM	TOTAL%
1978	54.55	45.45	0.00	100.00
1979	73.81	26.19	0.00	100.00
1980	67.35	30.61	2.04	100.00
1981	74.65	25.35	0.00	100.00
1982	74.31	25.00	0.69	100.00
1983	75.76	24.24	0.00	100.00

5. By Calendar Year: Claims Withdrawn From The Panel As A Percentage of Total Closed Claims; Claims Heard By the Panel

YEAR	WITHDRN	HEARING	#CLOCLMS	AN-CW%CC	CU-CW%CC
1978	0	0	0	0.0	0.0
1979	4	12	16	25.0	25.0
1980	2	24	26	7.69	14.29
1981	7	33	40	17.50	15.85
1982	12	43	55	21.82	18.84
1983	16	62	78	20.51	19.07
	41	174	215		

6. Physicians: Number of Claims By Specialty, Percentage of Each Specialt of Total Physicians, Number In Each Specialty, Claims in Each Specialty A Percentage of Total Claims

YEAR	SPEC-PHY	SPEC-NUM	TOTALPHY	#PSPWCLM	SPEC%TPH	CLSP%TCL
7883	FP	296	1100	68	26.9000	28.5700
7883	IM	143	1100	19	13.0000	9.29000
7883	GTCS	102	1100	31	9.30000	14.2900
7883	PD	60	1100	7	5.50000	2.50000
7883	P	38	1100	3	3.50000	1.43000
7883	ORS	52	1100	24	4.70000	11.4300
7883	OBG	64	1100	18	5.80000	7.86000
7883	CD	11	1100	4	1.00000	1.43000
7883	AN	47	1100	5	4.30000	2.14000
7883	EM	21	1100	7	1.90000	2.86000
7883	R	56	1100	12	5.10000	5.00000
7883	NS	11	1100	8	1.00000	2.86000
7883	U	29	1100	4	2.60000	1.43000
7883	PTH	31	1100	3	2.80000	1.07000
7883	OPH	46	1100	6	4.20000	2.86000
7883	OTO	25	1100	2	2.30000	0.71000
7883	N	8	1100	4	0.70000	1.43000
7883	DA	20	1100	2	1.80000	0.71000
7883	GE	2	1100	2	0.20000	0.71000
7883	OS	38	1100	1	3.40000	0.36000

7. Same As Above: Number of Different Physicians With Claims Against Them By Specialty - Alphabetically By Specialty

PHYSPEC	Number of Occurrences
AN	5
CD	4
DA	2
EM	7
FP	68
GE	2
GTCS	31
IM	19
N	4
NS	8
OBG	18
OPH	6
ORS	24
OS	1
OTO	2
P	3
PD	7
PTH	3
R	12
U	4
	230 different physicians

8. Number of Physicians With More Than One Claim Against Them-Repeat Physicians

No. Physicians	No Claims	Total Physicians
36	2	72
5	3	15
3	4	12
181	1	181
		280

Number of Hospitals & Nursing Homes With More Than One Claim Agai
Them

No. Hospitals & Nursing H	No Claims	Total Hospitals & NH
1	7	7
2	6	12
2	9	18
3	2	6
19	1	19
1	10	10
1	18	18
1	5	5
2	4	8
		103

9. Tally of Claims By Physician County

PHYCOUN	Number of Occurrences
BEAVERHEAD	2
BROADWATER	1
CARBON	2
CASCADE	32
CUSTER	4
DAWSON	3
DEER LODGE	2
FLATHEAD	15
GALLATIN	13
GLACIER	2
HILL	4
LAKE	5
LEWIS & CLARK	16
LIBERTY	3
LINCOLN	1
MISSOULA	32
PHILLIPS	2
PONDERA	1
POWELL	6
RAVALLI	1
RICHLAND	6
ROOSEVELT	2
SANDERS	2
SHERIDAN	2
SILVER BOW	18
STATE: OKLA	1
STATE: WA	1
STILLWATER	1
TETON	1
VALLEY	1
YELLOWSTONE	48

10. Closed Claims With Hearings - Nature of Hearing Disposition & Health Care Providers Before Panel

Claim Filed Against Health Care Providers & Disposition By Panel	Number
A. Physician(s) & Facility	
Both To Hearing	61
Facility To Hearing Withdrawn With No Settlement As to Physician(s)	2
Physician(s) To Hearing Withdrawn With No Settlement As to Facility	7
B. Physician(s) Alone To Hearing	88
Facility Alone To Hearing	16
	174

11. Closed Claims Without Hearings

Claims Filed Against Health Care Providers And Disposition	Number
A. Against Physician(s) And Facility	
Withdrawn, No Settlement, In Favor of All	9
Withdrawn, Settlement, Against All	3
Withdrawn, No Settlement Against Physician(s), Settlement Against Facility	1
B. Against Physician(s) Only	
Withdrawn, No Settlement Against	19
Withdrawn, Settlement Against	5
C. Against Facility Only	
Withdrawn, Settlement Against	2
Withdrawn, No Settlement Against	2
	41

12. Overall Panel Results

	Number Of Occurrences
A. Claims Involving Physicians	
Result In Favor of Physician	218
Result In Favor of Claimant	62
B. Claims Involving Facilities	
Result In Favor of Hospital	81
Result In Favor of Nursing Home	2
Result In Favor of Claimant Against Hospital	20
	383

13. Panel Votes: Health Care Providers - Talled as to 300 health care providers

Type Vote	Number Health Care Providers
A. Physicians	
Tie	10
Unanimous	
Against HCP	35
For HCP	127
Split	
Against HCP	26
For HCP	24
B. Facilities	
Tie	3
Unanimous	
Against HCP	8
For HCP	43
Split	
Against HCP	6
For HCP	18

13. Post-Panel Disposition: Number Of Health Care Providers Tracked To Date: 237 of 383

		Result Favorable To Claimant	Provider
A. Physicians			
Suit Filed	82		
No Suit Filed	155		
Withdrawn			
Settlement	55	55	
No settlement	108		108
Trial-Appeal Result			
Undetermined			
For Physician	2		2
For Claimant	1	1	
B. Facilities			
Suit Filed	27		
No Suit Filed	62		
Withdrawn			
Settlement	22	22	
No Settlement	40		40
Trial			
For Facility	1		1
For Patient			

C. Correlation Between Panel Results And Whether Suit Filed

1. Physicians: Suit Filed: Panel Result For

	Number of Occurrences
Claimant	19
Physician	35

2. Physicians: No Suit Filed: Panel Result for

	Number of Occurrences
Claimant	27
Physician	106

3. Facilities: No Suit Filed: Panel Result For

	Number of Occurrences
Claimaint	12
Hospital	44
Nursing Home	2

4. Facilities: Suit Filed: Panel Result For

	Number of Occurrences
Claimant	5
Hospital	15

D. Correlation Between Panel Result and Post-Panel Result: Unanimous Votes of Panel

	Number
Panel For Physician	
Post Panel	
For Physician	54
Against Physician	12
Panel For Claimant	
Post Panel	
For Claimant	16
Against Claimant	1
Panel For Facility	
Post Panel	
For Facility	15
Against Facility	6
Panel Against Facility	
Post Panel	
Against Facility	0
For Claimant	0

14. ASSESSMENT DETERMINATION FOR YEAR 1985

A. BUDGET ASSUMPTIONS

1.	Number of Expected Claims Filed:	122
2.	Number of Expected Hearings:	110
3.	Expected Administrative Expense: (1985 set at $100,552)	$100,552
4.	Expected Prehearing Expense Per Closed Claim: (1983 at $510.27; 1984 approximately $611.97)	$523
5.	Expected Hearing Expense Per HEARING HELD: (1983 at $1,621.55)	$1,622
6.	Expected Interest Rate (e.g. .08) on Invested Money:	0.08
7.	Contingency Fund Desired At End of Year:	$20,000
8.	Physicians To Be Assessed: (1984 at 1084)	1084
9.	Hospital Beds To Be Assessed: (1984 at 3442)	3442
10.	Other Facilities To Be Assessed: (1984 at 31)	31
11.	Current Number Of Open Claims:	40
12.	Expected Assessment Income, Previous Years:	$11,800
13.	Proportion Of The Following As To Total HCP With Claims, All Previous Full Years	
	a. Physicians:	0.7311
	b. Hospitals:	0.2637
	c. Other Facilities:	0.0052

ASSESSMENT	Physicians:	$246
	Each Bed:	$28
	Each Other Facility:	$61

RESULTING IN YEAR-END OPEN CLAIMS OF: 32
AND RESULTING IN YEAR-END CASH ON HAND OF: $0
EXCLUSIVE OF CASH CONTINGENCY OF: $20,000

B. INCOME-EXPENSE STATEMENT BASED ON BUDGET

	ASSESSMENT BUDGET	
INCOME		
Cash On Hand: Start	$63	
Expected Receivables		
Previous Years	$11,800	
Current Year	$347,020	
Interest Income	$7,932	
Total Income		$366,814
EXPENSE		
Administrative	$100,552	
Pre-Hearing	$67,821	
Hearing	$178,441	
Cash Contingency	$20,000	
Total Expense		$366,814
Income In Excess of Expense		$0

C. CURRENT DATA AS BASIS FOR ASSUMPTIONS

Year	Hearing Expense Per Hearing Held	Pre-Hearing Expense Per Closed Claim
1981	$1,626.94	$331.25
1982	$1,674.47	$416.18
1983	$1,547.19	$510.27
Thru Sept 1984	$1,621.55	$611.97
AVERAGE	$1,617.54	$467.42

D. CLAIMS PATTERNS

Year	Number of Claims Filed
1980	31
1981	37
1982	78
1983	89
1984 Est	97
1985	110

MONTANA MEDICAL ASSOCIATION

2021 Eleventh Avenue • Suite 12 • Helena, Montana 59601

BILLING TO MONTANA MEDICAL-LEGAL PANEL FOR
PERIOD JANUARY 1, 1985 TO DECEMBER 31, 1985

1)	Equipment rental	$ 6,800.00
2)	IBM System 6 and mag card rental	8,400.00
3)	Staff services	62,400.00
4)	Director	14,952.00
5)	Rent & utilities	8,000.00
	DUE	$100,552.00

Notes:

1) Equipment rental includes desks, chairs, filing cabinets, tables, postage equipment, mailing equipment, use of IBM Display Writers, IBM Personal Computer XT, dictation equipment, etc.

2) IBM System 6 & IBM Mag Card typewriter rental is exclusive of maintenance, ribbons, etc.

3) Staff time is computed for 2½ individuals and the availability of multiple secretarial assistance when required. Salaries - $48,710, retirement - $7,306, health insurance - $3,120 and FICA taxes - $3,264.

4) Director at $1,000 per month, part time. Salary - $12,000, retirement - $1,800, health insurance $348 and FICA - $804.

5) Rent and utilities is computed at $8 per foot for 1,000 square feet; no additional charge for conference facilities and additional office space when required.

Note: Payable monthly @ $8,379 per month.

Montana Medical-Legal Panel

2021 Eleventh Avenue, Suite 12, Helena, Montana 59601 — Telephone 443-1110

December, 1984

Dear Health Care Provider:

Enclosed is your assessment for 1985 for the Montana Medical-Legal Panel. Also enclosed are financial and claims data for your information.

Insurance for medical malpractice is based on the number of claims and the dollar impact of amounts paid out. The Panel assessment is based on the number of physicians, hospitals, hospital-related and long-term care facilities brought before the Panel, with hospitals being assessed on a per-bed basis.

The Panel's purposes include:

...The reduction in the number of non-meritorious claims for malpractice going to lawsuit and to trial

...The encouragement of the settlement of those with merit

...The collection of data on the "who, what, when and where" of malpractice claims in Montana, and its use in the reduction of future claims.

It is demonstrable that these goals are being met to a high degree.

Both patients and health care providers presumably benefit in having this type of forum for the airing of patient grievances, especially under circumstances where less time and cost on everyone's part is associated with definitively handling most of the claims.

If you have any questions, please feel free to write and inquire.

Respectfully submitted,

G. Brian Zins, Director
Montana Medical-Legal Panel

GBZ:jt
Enclosures

ASSESSMENT DETERMINATION FOR YEAR 1985

A. BUDGET ASSUMPTIONS

1.	Number of Expected Claims Filed:	122
2.	Number of Expected Hearings:	110
3.	Expected Administrative Expense: (1985 set at $100,552)	$100,55[illegible]
4.	Expected Prehearing Expense Per Closed Claim: (1983 at $510.27; 1984 approximately $611.97)	$523
5.	Expected Hearing Expense Per HEARING HELD: (1983 at $1,621.55)	$1,622
6.	Expected Interest Rate (e.g. 8%) on Invested Money:	8%
7.	Contingency Fund Desired at End of Year:	$20,000
8.	Physicians to be Assessed: (1984 at 1084)	1084
9.	Hospital Beds to be Assessed: (1984 3442)	3442
10.	Other Facilities to be Assessed: (1984	31
11.	Current Number of Open Claims:	40
12.	Expected Assessment Income, Previous Years:	$11,800
13.	Proportion of the Following as to Total HCP with Claims	
	a. Physicians:	73.11%
	b. Hospitals:	26.37%
	c. Other Facilities:	52%

ASSESSMENT

a. Physicians:	$246
b. Hospital Bed:	$28
c. Each Other Facility:	$61

RESULTING IN:

Year-end open claims:	32
Year-end cash on hand:	$0
Exclusive of cash contingency:	$20,000

B. INCOME-EXPENSE STATEMENT BASED ON BUDGET

INCOME		
Cash on Hand: Start	$63	
Expected Receivables		
Previous Years	$11,800	
Current Year	$347,020	
Interest Income	$7,932	
Total Income		$366,814
EXPENSE		
Administrative	$100,552	
Pre-Hearing	$67,821	
Hearing	$178,441	
Cash Contingency	$20,000	
Total Expense		$366,814
Income in Excess of Expense		-0-

C. CURRENT DATA AS BASIS FOR ASSUMPTIONS

Year	Hearing Expense Per Hearing Held	Pre-Hearing Expense Per Closed Claim
1981	$1,626.94	$331.25
1982	$1,674.47	$416.18
1983	$1,547.19	$510.27
Thru Sept 1984	$1,621.55	$611.97

D. CLAIMS PATTERNS

Year	Number of Claims Filed
1980	31
1981	37
1982	78
1983	89
1984 Estimate	97
1985 Estimate	122

FROM:

PLACE POSTAGE ON REVERSE SIDE

PLACE
POSTAGE
HERE

MML PANEL

2021 Eleventh Avenue, Suite 12

Helena, MT 59601

MONTANA MEDICAL-LEGAL PANEL ASSESSMENT

1985

PHYSICIANS	HOSPITALS AT	HOSPITAL-RELATED AND
	$28.00 Per Bed,	LONG-TERM CARE FACILITIES
*$246.00 Each		$61.00 Each
	Your Hospital $_____	

PLEASE REMIT THE APPROPRIATE AMOUNT SHOWN ABOVE AND RETURN IN THIS ENVELOPE.

DUE AND PAYABLE BY MARCH 31, 1985

YOUR CANCELLED CHECK SHALL SERVE AS YOUR RECEIPT.

*If began practice after January 1985, please prorate at $20.50/mo. beginning month of practice through December 1985.

TO EACH HEALTH CARE PROVIDER CONCERNED

This is a statement for your share (as a Montana licensed provider) of the 1985 assessment for operation of the Montana Medical-Legal Panel, as authorized by M.C.A. 27-6-206.

The Panel hears claims against all physicians, hospitals, hospital-related facilities and long-term care facilities involving alleged negligence in providing health care. Such claims cannot be filed in court prior to a Panel decision.

This statement represents your assessment for 1985.

Under M.C.A. 27-6-206(3) the assessment is due and payable by March 31, 1985. Under that statute the Director of the Panel has, upon default of such payments, the same powers as the Department of Professional and Occupational Licensing under M.C.A. 37-3-313.

The Panel has a great potential for the reduction of costs associated with such claims, and hopefully will help to reduce insurance premiums in a greater amount than Panel costs, a savings that could then be passed on to patients.

Thank you.

STATE PUBLISHING CO., HELENA, MONT

MONTANA MEDICAL - LEGAL PANEL

HELENA, MONTANA

AUDIT REPORT

FOR THE YEARS DECEMBER 31, 1983 AND 1982

TABLE OF CONTENTS

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Statements of Assets, Liabilities and Fund Balance	2
Statements of Revenues Collected, Expenses Disbursed and Surplus	3
Statements of Changes in Financial Position	4
Notes to Financial Statements	5

NEWLAND, HORN, CRIPPEN & PECK, P.C.
Certified Public Accountants

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(406) 846-3733

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William B. Horn
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Dennis W. Peck

Ronald W. Wagner
Ronald W. Hanni
John F. Burns

Mr. G. Brian Zins
Executive Director
Montana Medical - Legal Panel
2021 Eleventh Ave.
Helena, Montana 59601

We have examined the statement of assets, liabilities and fund balance arising directly from cash transactions of the Montana Medical - Legal Panel as of December 31, 1983 and 1982, and the related statements of revenues collected and expenses disbursed and changes in financial position for the years then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

As described in note 1, the Panel policy is to prepare its financial statements on the basis of cash receipts and disbursements; consequently, certain revenue and the related assets are recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the accompanying financial statements are not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly the assets, liabilities and fund balance arising from cash transactions of the Montana Medical - Legal Panel at December 31, 1983 and 1982, and the revenue collected and expenses paid and the changes in its financial position for the years then ended, on the basis of accounting described in note 1, which basis has been applied in a manner consistent with that of the preceding year.

Newland Horn Crippen & Peck P.C.
NEWLAND, HORN, CRIPPEN & PECK, P.C.
Certified Public Accountants

Dillon, Montana
March 27, 1984

EXHIBIT "A"

MONTANA MEDICAL - LEGAL PANEL
HELENA, MONTANA

STATEMENTS OF ASSETS, LIABILITIES AND FUND BALANCE
DECEMBER 31, 1983 AND 1982

ASSETS

	1983	1982
Current assets:		
Cash in bank	$14,837	$16,310
Investments	-0-	2,505
Other receivables	80	-0-
Total current assets	$14,917	$18,815

LIABILITIES AND FUND BALANCE

Current liabilities:		
Notes payable, bank	$ -0-	$80,000
Fund balance:		
Surplus (Exhibit "B")	14,917	(61,185)
Total liabilities and fund balance	$14,917	$18,815

See accompanying notes to financial statements.

EXHIBIT "B"

MONTANA MEDICAL - LEGAL PANEL
HELENA, MONTANA

STATEMENTS OF REVENUES COLLECTED, EXPENSES DISBURSED AND SURPLUS
FOR THE YEARS ENDED DECEMBER 31, 1983 AND 1982

	1983	1982
Assessment fees	$259,698	$ 77,502
Interest income	3,862	2,302
Miscellaneous income	-0-	305
Total income	263,560	80,109
Expenses:		
Printing	1,440	339
Telephone	4,293	2,637
Office supplies	350	823
Postage	7,098	3,393
Xerox	10,568	5,927
Interest expense	4,145	-0-
Medical record and x-ray charges	1,590	1,447
Panelist hearing time	55,712	45,100
Panelist preparation and travel time	22,854	14,923
Panelist travel	17,360	11,979
Panel legal counsel	7,722	5,052
Administrative	50,200	69,225
Miscellaneous	4,126	3,689
Total expenses	187,458	164,534
Net income (loss)	76,102	(84,425)
Surplus January 1st	(61,185)	23,240
Surplus December 31st	$ 14,917	($ 61,185)

See accompanying notes to financial statements.

EXHIBIT "C"

MONTANA MEDICAL - LEGAL PANEL
HELENA, MONTANA

STATEMENTS OF CHANGES IN FINANCIAL POSITION
FOR THE YEARS ENDED DECEMBER 31, 1983 AND 1982

	1983	1982
Working capital used by operations:		
Net income (loss)	$76,102	($84,425)
Increase (decrease) in working capital, as below	$76,102	($84,425)
Changes in working capital by element:		
Increase (decrease) in current assets -		
Cash	($ 1,473)	($ 6,929)
Investments	(2,505)	2,504
Other assets	80	-0-
Total	(3,898)	(4,425)
Increase (decrease) in current liabilities -		
Notes payable, bank	(80,000)	80,000
Increase (decrease) in working capital	$76,102	($84,425)

See accompanying notes to financial statements.

MONTANA MEDICAL - LEGAL PANEL
HELENA, MONTANA

NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1983

Note 1: Accounting Policies

Organization: The Panel was established by the "Montana Medical Legal Panel Act", as authorized by Sections 27-6-101 through 27-6-704 M.C.A. The Panel is attached to the Montana Supreme Court for administrative purposes only, except that 2-15-121 (2) does not apply.

Cash basis: The Panel follows the cash basis of accounting whereby items of expense are recognized as cash is expensed and revenues are recognized when cash is received.

Note 2: Accounts Receivable

The Panel, at December 31st, had not as yet received the following fees:

	Physicians	Hospital	Total
1982	$ 600	$ 300	$ 900
1983	15,750	1,800	17,550
Total	$16,350	$2,100	$18,450

Note 3: Accounts Payable

The Panel, at December 31st, had not paid the following bills:

Panel hearing time	$ 80
Panel preparation and travel time	195
Panel travel time	7
Panel, other	630
Medical records	25
Total	$ 937

EXPENDITURES OF THE

MONTANA MEDICAL-LEGAL PANEL

THROUGH 1983

JANUARY 1984

GERALD J. NEELY, ESQ
COUNSEL TO PANEL

EXPENDITURES OF THE

MONTANA MEDICAL-LEGAL PANEL

THROUGH 1983

1. TOTAL EXPENDITURES: 1978-1983

The Panel administration spent $599,727 from 1978 - 1983. These expenditures involved the processing of claims of medical malpractice made against physicians, hospitals, and long-term care facilities.

The Panel is obligatory as a pre-condition to a state court lawsuit as to any claims arising after April 18, 1977. By the consent of all parties, the Panel has heard some claims which occurred prior to that date.

The total expenditures have involved the processing of:

... 295 claims filed before the Panel

.. 67 of which have been withdrawn and fully completed, with or without settlement
.. 178 of which have been heard by a full panel of three lawyers and three health care providers
.. 50 of which are still open and being processed, each having been filed in 1983.

2. TOTAL EXPENDITURES: 1983

The 1983 expenditures for the Panel were $187,458 for the processing of:

... 95 claims filed before the Panel in 1983
... 83 closures of claims filed in 1982 and 1983

.. 21 of which were withdrawn and fully completed, with or without settlement
.. 62 of which were heard by a full panel

3. RECENT CHANGES IN TOTAL EXPENDITURES.

A. In Relation to Claims Filed, Closed, and Hearings Held.

Since 1980, total expenditures have increased at a lower rate than the number of claims filed, claims closed, or hearings held:

Category	1980-1983 Percentage Increase
Total Expenditures	97.4%
Claims Filed	163.9%
Claims Closed	159.4%
Hearings Held	148.0%

B. On A Per Claim Closed Basis.

Since 1980, total expenditures on a per claim closed basis have dropped by 23.9%:

	Year		Percentage
	1980	1983	Increase
Per Claim Closed Cost	$2,969	$2,259	(23.9%)

4. ITEM EXPENDITURES: 1978-1983

The Panel Administration spent funds from 1978 - 1983 on the following percentage basis:

Item	Percentage of Total Expenditures
Administration	36.2%
Panelist fees & travel	46.5%
Printing and reproduction	5.0%
Legal	4.9%
Postage	2.3%
Telephone	1.9%
Other	3.2%
	100.0%

Nearly 83% of total expenditures were for the administration of the claims and the panelist fees and travel.

5. RECENT CHANGES IN ITEM EXPENDITURES ON A PER CLAIM CLOSED BASIS

Since 1980, the item expenditures have increased or decreased as follows, on a per claim closed basis:

Item	Year per closed claim 1980	1983	Percentage Increase
Administration	$1,498	$ 605	(59.6%)
Panelist fees & travel	1,142	1,156	1.2%
Printing and reproduction	69	164	137.7%
Legal	134	93	(30.6%)
Postage	42	84	100.0%
Telephone	47	52	10.6%
Other	37	104	181.1%
Total	$2,969	$2,259	(23.9%)

The cost per claim closed dropped by nearly 24% from 1980 to 1983, primarily as a result of drops in the cost per closed claim for administration and legal fees.

These overall cost reductions were achieved even though the costs associated with the Panel administration's assumption of the cost and responsibility for medical record gathering, reproduction, and distribution increased substantially.

Printing and reproduction and postage alone increased from $111 to $248 per closed claim -- or by 123% -- from 1980 to 1983.

On the assumption that half of one employee's time is now spent on the medical records matter, by eliminating printing of Rules of Procedure from the expenditures, and eliminating the other day-to-day cost of postage and photocopying, it is estimated that the cost per claim of medical record receipt, reproduction, and distribution has increased from approximately $90 per closed claim to $315 per closed claim from 1980 to 1983, a 250% increase:

	Cost per Closed Claim 1980	1983	% Increase
Administration	$ 0	$ 84	--
Reproduction	58	146	152%
Postage	32	85	166%
Total	$ 90	$ 315	250%

Such medical records cost are thus currently about 14% of the total Panel costs.

6. FUTURE PANEL COSTS

A refined estimation of future Panel costs requires assumptions as to the number of claims that will be closed with hearing and without hearing. Also required is an assumption as to the costs of administration and the per closed claim cost of hearings held and the pre-hearing non-administrative costs.

Assuming the closure of 100 claims by hearing and 27 by settlement prior to hearing, without the addition of added staff to handle the added closures, it is estimated that the Panel administration will expend $280,031 in 1984 as follows:

-- Administration, at $516 per closed claim	$ 65,532
-- Pre-hearing costs at $537 per closed claim	68,199
-- Hearing costs at $1,463 per hearing	146,300
	$ 280,031

With the addition of one full time staff member for 10 months of 1984, it is estimated that the annual expenditure will be $290,000.00. Budget expenditures for year 1984 made in 1983 was $290,540.00.

ITEMS AS A PERCENTAGE OF TOTAL EXPENDITURES BY YEAR, 1979-1983

	1979	1980	1981	1982	1983	Total
Fixed Costs						
Administrative	46.3%	50.5%	22.8%	42.1%	26.7%	36.2%
Variable Costs						
Panelist Fees	22.5%	31.0%	50.8%	36.5%	41.9%	38.0%
Panelist Travel	6.4%	7.5%	11.6%	7.3%	9.3%	8.5%
Printing & Reproduction	3.9%	2.3%	4.4%	4.7%	7.3%	5.0%
Legal	14.4%	4.5%	3.8%	3.1%	4.1%	4.9%
Telephone	1.5%	1.6%	2.3%	1.6%	2.3%	1.9%
Postage	1.2%	1.4%	1.2%	2.1%	3.8%	2.3%
Supplies	1.0%	.4%	.6%	.5%	.2%	.5%
Interest	0.0%	0.0%	0.0%	0.0%	2.2%	.7%
Miscellaneous	2.8%	.8%	2.5%	2.2%	2.2%	2.0%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

DOLLAR EXPENDITURES OF PANEL BY YEAR: 1979-1983

	1979	1980	1981	1982	1983	Total
Fixed Costs						
Administrative*	$29,223	$47,925	$20,475	$69,225	$50,200	$217,048
Variable Costs						
Panelist Fees**	14,202	29,463	45,584	60,023	78,566	227,838
Panelist Travel***	4,020	7,082	10,392	11,979	17,360	50,833
Printing and Reproduction	2,481	2,218	3,927	7,713	13,598	29,937
Legal	9,093	4,272	3,406	5,052	7,722	29,545
Telephone	915	1,505	2,039	2,637	4,293	11,369
Postage	736	1,334	1,104	3,393	7,098	13,665
Supplies	632	387	562	823	350	2,754
Interest	0	0	0	0	4,145	4,145
Miscellaneous	1,751	796	2,212	3,688	4,126	12,573
Total	$63,053	$94,982	$89,701	$164,533	$187,458	$599,727

NOTES:

* - A substantial portion of the 1981 administrative expenses were paid in 1982.

** - Fees for preparation and hearing time.

*** - Includes fees for time of travel plus cost of travel, board and room

Year 1979 includes nominal expenditures from year 1978.

COST PER CLAIM CLOSED: 1979-1983

Year	Total Expenditures	No. Claims Closed	Cost per Claim Closed
1979	$ 63,053	33	$ 1,911
1980	94,983	32	2,968
1981	89,699	40	2,242
1982	164,533	57	2,887
1983	187,537	83	2,259
Total	$ 599,805	245	N/A
Average	$ 119,961	49	$ 2,448

ADMINISTRATIVE COSTS PER CLAIM CLOSED: 1979-1983

Year	Administrative Costs	Claims Closed	Administrative Cost per Claim Closed
1979	$ 29,223	33	$ 886
1980	47,925	32	1,498
1981	20,475	40	519
1982	69,225	57	1,214
1983	50,200	83	605
Total	$217,048	245	
Average	$ 43,410	49	$ 886

NOTE: A substantial portion of the 1981 administrative expenses were not paid until year 1982. Any comparison of changes in expenditure patterns using 1981 or 1982 as a base year must take this factor into account.

NON-ADMINISTRATIVE PRE-HEARING COSTS PER CLAIM CLOSED:

1979-1983

Year	Non-administrative Pre-hearing Costs	Claims Closed	Non-administrative Pre-hearing Costs Per Claim Closed
1979	$ 15,608	33	$ 473
1980	10,512	32	329
1981	13,250	40	331
1982	26,306	57	462
1983	41,332	83	498
Total	$ 107,008	245	
Average	$ 21,402	49	$ 438

NON-ADMINISTRATIVE PRE-HEARING COSTS PER CLAIM CLOSED, BY ITEM: 1979-1983

	COST PER CLAIM CLOSED				
ITEM	1979	1980	1981	1982	1983
Printing and Reproduction	$ 75.18	$ 69.31	$ 98.18	$135.32	$163.83
Legal	275.55	133.50	85.15	88.63	93.04
Telephone	27.73	47.03	50.98	46.26	51.72
Postage	22.30	41.69	27.60	59.53	85.52
Supplies	19.15	12.09	14.05	14.44	4.22
Interest	0.00	0.00	0.00	0.00	49.94
Miscellaneous	53.06	24.88	55.30	64.70	49.71

DIRECT HEARING COSTS PER HEARING: 1979-1983

Year	Direct Hearing Costs	Hearings Held	Direct Hearing Costs Per Hearing Held
1979	$ 18,222	14	$ 1,302
1980	36,545	25	1,462
1981	55,976	33	1,696
1982	72,002	44	1,636
1983	95,926	62	1,547
Total	$ 278,671	178	
Average	$ 55,734	36	$ 1,566

RECENT CHANGES IN TOTAL EXPENDITURES IN RELATION TO CLAIMS FILED, CLOSED AND HEARINGS HELD:

	1980	1983	Percentage Increase
Total Expenditures	$ 94,982	$187,458	97.4%
Claims Filed	36	95	163.9%
Claims Closed	32	83	159.4%
Hearings Held	25	62	148.0%

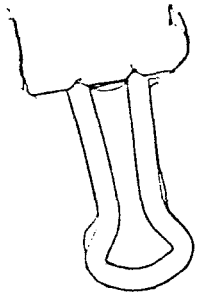
RECENT CHANGES IN EXPENDITURES PER CLAIM CLOSED: 1980 to 1983

	Cost Per Claim Closed 1980	1983	Percentage Increase
Administrative	$ 1,498	$ 605	(59.6%)
Non-Administrative Pre-hearing			
Printing & Reproduction	69	164	137.7%
Legal	135	93	(30.6%)
Telephone	47	52	10.6%
Postage	42	84	100.00%
Supplies	12	4	(66.7%)
Interest	0	50	--
Miscellaneous	25	50	100.0%
Total	329	498	51.4%
Hearing Costs	1,142	1,156	1.2%
TOTAL	$ 2,969	$ 2,259	(23.9%)

NOTE: The above presents hearing costs per claim closed. For purpose of a per-hearing held comparison, the following is appropriate:

1980	1983	Percentage Increase
$1,462	$ 1,547	5.8%

The cost per claim closed for 1980 of $2,969 varies from the $2,968 of the total expenditures divided by total closed claims due to rounding.



Montana Medical Legal Panel

Rules of Procedure

October 1, 1983

STATE PUBLISHING CO. HELENA MONT

TIME TABLE FOR LAWYERS IN MONTANA MEDICAL LEGAL PANEL CLAIMS

This Time Table indicates the time for key steps in a claim before the Montana Medical Legal Panel, as provided by the Rules of Procedure. It should be noted by the parties that once a Panel has been selected and the hearing date set, considerable expense to the Panel and delay for the claim are involved in any rescheduling.

ANSWER

to Application

Filed with Panel within 20 days of receipt of claim by health care provider. Rule 7(a).

to Amended Application

Answer deemed Answer to Amended Application, unless Amended Answer filed with Panel within 20 days of receipt of Amended application by health care provider. Rule 7(a).

AMENDMENT

of Application

As a matter of course allowed, within 20 days of receipt of original application by Panel. At request or by authorization of Director or Chairman of Panel, within 20 days of receipt of such request or authorization. If filed with Panel within 30 day period before hearing date, hearing continued not more than 30 days. Rule 6(d)(3).

APPLICATION

Filing of

Filed with Panel prior to filing a complaint in District or Justice Court, Rule 6(b), on form provided by Director. Rule 6(d).

CONSENT FORMS

Claimant filing of

Filed at time of filing application, signed by claimant, on a form provided by the Director, as to all health care providers mentioned. Rule 6(d)(2).

Health Care Provider filing of

Filed at time of providing medical records, signed by Health Care Provider, on a form provided by the Director. Rule 7(b).

CONSULTATION, MEDICAL

Cooperation of Director

Claimant request for Director cooperation in retaining medical consultation made within four weeks of filing of Application. Rule 11.

IN THE SUPREME COURT OF THE STATE OF MONTANA

RE: Rules of Procedure, Montana Medical Legal Panel

ORDER

Section 27-6-204, MCA, authorizes the Director of the Montana Medical Legal Panel, in consultation with the State Bar of Montana and subject to the approval of the Supreme Court, to adopt and publish Rules of Procedure necessary to implement and carry out the duties of the Panel.

The Director of the Panel, after consultation with the State Bar of Montana, having presented proposed Rules to the Court, and the Court exercising its authority to promulgate guidelines for the payment of hourly fees to panelists under Section 27-6-203, MCA:

THEREFORE, IT IS ORDERED THAT effective October 1, 1983, the following are adopted as the Rules of Procedure for the Montana Medical Legal Panel:

RULE 1. Definitions. As used in these Rules:

(a) "Health care provider" means a "physician" or a "health care facility". A "physician" means an individual licensed to practice medicine by the Department of Commerce pursuant to M.C.A. Title 37, Chapter 3. A "health care facility" means a facility, other than a governmental infirmary or any infirmary not staffed by a physician, licensed as a health care facility by the Department of Health and Environmental Sciences pursuant to M.C.A. Title 50, Chapter 5.

(b) "Malpractice claim" means any claim or potential claim against a Health Care Provider for medical treatment, lack of medical treatment or other alleged departure from accepted standards of health care which proximately results in damage to the patient, whether the patient's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(c) "Panel" means the Montana Medical Legal Panel provided for in Section 27-6-104, MCA.

(d) "Act" means the Montana Medical Legal Panel Act as established by Sections 27-6-101 through 27-6-704, MCA.

(e) "Director" means the Director of the Panel.

INTRODUCTION TO PANEL RULES

Should you have a claim to be filed before the Montana Medical Legal Panel, you may request Application and Consent Forms by writing:

Montana Medical Legal Panel
2021 - 11th Avenue, Suite #12
Helena, Montana 59601

It will be helpful if you will provide the date of each alleged occurrence in your correspondence requesting the forms, so that the Panel can determine if the claim is one covered by the Act, or, if occurring prior to April 19, 1977, a claim which under Rule 6 may be submitted to the Panel upon all parties consenting thereto.

For your assistance a timetable outlining the various time requirements of the Rules is presented on page 12.

DISQUALIFICATION
of Panelists
Affidavit stating facts filed with Pane within 15 days of Director's mailing of list o selected Panel members. Rule 10(c).

EXHIBITS
and Documentary evidence
Provided to Director and all other parties n later than 30 days prior to hearing, unles not earlier available, then as soon as avail able. Rule 14.

HEARING
date
Fixed by Director after receipt of Applica tion by Panel, but no later than 120 days after transmittal of Application by Director to other parties. Rule 12(a).

LAWSUIT
filing of
May not be filed in District or Justice Court before Application to Panel and its decision rendered. Rule 6(b).

SUPPLMENTAL HEARING
Upon Panel request for additional information, no later than 30 days after original hearing. Rule 15(e).

TELEPHONE CONFERENCE
Pre-hearing
At least 5 days before hearing date. Rule 13.

TRANSCRIPTION
of Record, Request
At telephone conference. Rule 13(4).

(f) "Substantial Evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, or, stated another way, enough evidence to justify refusal to direct a verdict on a factual issue in jury trial.

RULE 2. Scope of Rules. These Rules apply to all proceedings before the Montana Medical Legal Panel established by the Act.

RULE 3. Purpose of the Panel. The purpose of the Panel is to prevent, where possible, the filing in court of actions against Health Care Providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against Health Care Providers as are or reasonably may be well founded.

RULE 4. Fees. No fees or charges are to be levied upon claimants as a precondition to the bringing of a malpractice claim before the Panel.

RULE 5. Representation and Appearance-Counsel. The parties may be represented by counsel in proceedings before the Panel though it shall not be required. If any party chooses to retain legal counsel, such legal counsel shall informally enter his or her appearance with the Director. Thereafter, all communications required by these Rules to be transmitted to a party and all other communications directed to a represented party shall be directed to the appropriate counsel, with a copy to the Director, except that the Notice of Hearing required by Rule 12 shall be provided to all the parties involved and their counsel, if any.

RULE 6. Presentation of Claims.

(a) These Rules shall apply to all malpractice claims arising from a Health Care Provider's acts and/or omissions occurring on or after April 19, 1977; provided however, claims arising prior thereto may be submitted to the Panel upon all parties consenting thereto.

(b) Prior to filing a complaint in any State District or Justice Court in Montana, claimants shall submit a case for consideration of the Panel, and no malpractice claim to which the Act is applicable may be filed in any such court against a Health Care Provider before an application is made to the Panel and its decision rendered.

RULE 18. Compensation of the Panel. Al members of the Panel shall be paid a fee of Fort ($40.00) Dollars per hour, up to a maximum o Three Hundred Twenty ($320.00) Dollars per da in which a hearing or part of a hearing is held, fo the time spent in hearing claims subject to the ap proval of the Director and upon presentation of billing itemizing to the one-tenth (1/10th) of a hour the nature of the services performed and th time involved. Additional compensation for trave time and other services shall be considered by th Director under circumstances including, but no limited to weather or distance.

RULE 19. Additional Authority of Panel. The Panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by the Act, the issuance of subpoenas in connection with the administration of the Act, and the performance of all other act fairly and effectively administer the Act.

(1) Whether there is substantial evidence that the acts or omissions complained of occurred;

(2) If the answer to (1) is "Yes", whether there is substantial evidence such acts or omissions constitute a departure from the accepted standards of health care;

(3) If the answer to (2) is "Yes", whether there is a reasonable probability that the patient was injured thereby.

(b) All votes of the Panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of those voting members of the Panel who sat on the entire case. The decision shall be communicated in writing to the parties and their attorneys, and a copy thereof shall be retained in the permanent files of the Panel.

(c) The decision shall in every case be signed for the Panel by the chairman and shall contain only the conclusions reached by a majority of its members and shall list the number of members, if any, dissenting therefrom. The majority may briefly explain the reasoning and the basis for their decision, and the dissenters may likewise explain the reason for disagreement.

(d) The report of the Panel is not admissible as evidence in any action subsequently brought in any court of law. A copy of the report shall be sent by the Director to the Health Care Provider's professional licensing board.

(e) Panelists and witnesses are immune from civil liability for all communications, findings, opinions and conclusions made in the course and scope of the duties prescribed by the Act.

(f) The Panel's decision is without administrative or judicial authority and is not binding upon any party. The Panel may, however, recommend an award, approve settlement agreements consented to by the parties and discuss the same and all such approved settlement agreements are binding on the parties.

RULES 17. Travel Expenses. All members of the Panel, the Director, and his staff are entitled to travel expenses incurred while on the business of the Panel, as provided in Sections 2-18-501 through 2-18-503, MCA, but such expenses shall be approved by the Director before payment is made.

(c) Claimants shall submit a case for consideration of the Panel by delivery of an application in writing and signed by the patient and/or his or her attorney, by certified mail, to the office of the Director.

(d) The application, on a form provided by the Director, shall contain the following:

(1) A statement in reasonable detail of the elements of the Health Care Provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians and hospitals having contact with the claimant, and all witnesses. The Director shall immediately notify the Health Care Provider of the filing of the claim and furnish him a copy thereof.

(2) A statement signed by the claimant, on a form provided by the Director, for each Health Care Provider involved (whether a party or not), authorizing the Panel to obtain access to all medical and hospital records and information pertaining to the claim and, for purposes of its consideration of the matter only, which includes distribution of such records to the Health Care Providers named in the claim before the Panel or their attorneys, waiving any privilege as to the contents of those records. Nothing in that statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

(3) A claimant may amend the application as a matter of course within 20 days of the receipt of the application by the Panel, but thereafter only upon approval of the Director, or the Chairman of the Panel, if one is selected. The Director or, in the event of the selection of a Panel chairman, such chairman may, upon his own initiative or upon the written request of the Health Care Provider, request the application be amended to provide additional details of the claim. Such an amendment, and any other amendments to the application, must be delivered to the Director within twenty (20) days of receipt of a written request or authorization by the Director or Chairman, along with sufficient copies for service by the Panel on all other parties. In the event an amendment to the

claim is filed less than thirty (30) days prior to hearing, upon request of the other party, the hearing will be automatically continued to a date not less than thirty (30) days after the original hearing date. Any continuances of the hearing in excess of thirty (30) days after the original hearing date shall be granted only upon a showing of good cause.

RULE 7. Answer to Application.

(a) Within twenty (20) days after receipt of the claim, the Health Care Provider shall answer the application for review, by delivery of the answer in writing and signed by the Health Care Provider or his or her attorney, by certified mail, to the office of the Director, with sufficient copies for service by the Panel on all other parties. For good cause shown, the Director may extend the answer time.

The answer shall be deemed an answer to any amended application, unless within twenty (20) days after the receipt of the amended application, the Health Care Provider delivers in the same manner as required above, an amended answer.

(b) The Health Care Provider shall, on a form provided by the Director, authorize the Panel to inspect all medical and hospital records and information pertaining to the application and, for the purposes of such inspection only, which includes distribution of such records to the claimant or his or her attorney, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose.

(c) Upon receipt of an answer or an amended answer to an application, the Director shall serve a true copy of the same upon the claimant and all other health care providers in the same manner as provided for service of the application in Rule 8(a).

RULE 8. Transmittal of Documents.

(a) Upon receipt of an application for review or an amendment thereto, the Director shall serve a true copy of the same upon the Health Care Provider whose conduct is claimed by the application to have constituted the basis for a malpractice claim. Service shall be effected by mailing, certified, a copy of the claim to the Health Care Provider, postage prepaid, return receipt requested.

the facts constituting the alleged professional malpractice which he is prepared to prove. The Health Care Provider against whom the claim is brought may be present, and he or his counsel may make an introductory statement of his case.

(b) Claimant shall proceed first with his case followed by the Health Care Provider. Both parties may call witnesses to testify, who shall be subject to cross-examination and who shall be sworn. Medical texts, journals and other documentary evidence relied upon by either party may be offered and admitted, if relevent, and if submitted timely under Rule 14. Written statements of fact by treating Health Care Providers or claimants may be reviewed.

(c) The hearing will be confidential and informal, and the Panel shall not make, pay for or retain any transcript; with the consent of the chairman of the Panel and all parties to the claim, the parties may provide for the making, payment and retention of a transcript. The Montana Rules of Evidence shall not apply to hearings before the Panel; however, irrelevant, immaterial or unduly repetitious evidence may be excluded by the chairman.

(d) All members of the Panel shall have the right to examine the parties and witnesses, subject to the control of the chairman.

(e) At the conclusion of the hearing, the Panel may take the claim under advisement or may request that additional facts, records, witnesses or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than thirty (30) days from the date of the original hearing, unless the party bringing the matter for review consents in writing to a longer period.

(f) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties and their attorneys may be present.

(g) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions and internal proceedings of the Panel.

RULE 16. Panel Deliberations and Decisions.

(a) The deliberations of the Panel are confidential. Upon consideration of all the relevant material, the Panel shall decide:

(b) Additionally, upon receipt of the application for review, the Director shall:

(1) Mail all parties a copy of these Rules of Procedure;

(2) Mail a copy of the application to the directors of the Health Care Provider's professional society or association and the State Bar. If no state professional society or Association exists with respect to such Health Care Provider, or if the Health Care Provider does not belong to such a society or association, the Director shall transmit the application to the Health Care Provider's state licensing board.

(c) Upon receipt of the selected panelists pursuant to Rule 9, the Director shall transmit by mail to all parties a list of all Panel members selected, including a short professional biographical sketch of each panelist.

(d) At least ten (10) days prior to the hearing date set for a claim, the Director shall furnish to each panel member copies of all claims, briefs, medical records and other documents pertaining to the claim; except when the chairman, or Director if a chairman has not been selected, of the Panel determines that it is impractical to reproduce or mail a medical record or other document, in which case such records or documents shall be made available to Panel members at the hearing and at the Panel office prior to the hearing, and each Panel member shall be notified of the decision of the chairman or Director and the availability of the materials.

RULE 9. Selection of Panel Members.

(a) Except as herein provided, there shall be three (3) panel members from the Health Care Provider's profession and three (3) panel members from the State Bar in review of each case. The attorneys shall select one of their members as chairman of the Panel as soon as possible but in no event less than ten (10) days prior to the time set for the hearing.

(b) Those eligible to sit on the Panel are Health Care Providers licensed pursuant to Montana law residing in Montana and members of the State Bar of Montana residing in Montana.

(c) The Health Care Provider's professional association or society and the State Bar shall select twelve (12) panel members within four

RULE 13. Pre-hearing Telephone Conference. At least five (5) days prior to the hearing date set, the following parties shall confer, by telephone conference call or personally, with the chairman of the Panel: claimant and/or his attorney, the Health Care Provider and/or his attorney, and the Director of the Panel. During the pre-hearing conference call, the parties shall consider the following:

(1) Simplification and identification of issues;

(2) Obtaining of admissions to or stipulations of facts not remaining in dispute and of the authenticity of documents;

(3) Limitation of the number of expert witnesses to be called and scheduling of their appearances;

(4) Estimation of length of hearing and, if applicable, consideration of any transcription request;

(5) Any other matters that might aid in expeditious consideration and determination of the claim.

RULE 14. Exhibits and Documentary Evidence. No later than thirty (30) days prior to the hearing date set for the claim, all parties shall furnish each other a copy and the Director seven (7) copies of all records and other documents and exhibits other than medical records obtained by the Panel, properly idenfitied, upon which they intend to rely at the time of the hearing; provided, however, if a party proves that competent evidence was not available within such thirty (30) day period, the party producing such evidence shall be required to notify the Director, the other party, and all panel members of such evidence as soon as it becomes available to him and serve copies thereof upon all such persons. The chairman shall have the discretionary authority to admit such later acquired evidence upon such terms and conditions as he deems just and equitable in the premises.

RULE 15. Hearing Procedures.

(a) At the time set for hearing, the claimant submitting the case for review shall be present, personally, unless that presence is: (1) waived by all health care providers; or (2) excused by the Panel Chairman or the Director upon a timely request stating the reasons therefore. The claimant or his counsel shall make a brief introduction of his case, including a resume of

teen (14) days from the date of transmittal of the application for review to said societies. If no such society or association exists or if the Health Care Provider does not belong to such a society or association, the Health Care Provider's state licensing board shall within the same time period as required above select twelve (12) persons from the Health Care Provider's profession and, where applicable, persons specializing in the same field or discipline as the Health Care Provider.

(d) Whenever there are multiple Health Care Providers the claim against each Health Care Provider may be reviewed by a separate Panel, or at the discretion of the Panel initially appointed or by stipulation of the parties, a single Panel may review all the claims against all parties.

(e) Whenever the theory of respondeat superior or some other derivative theory of recovery is employed, two (2) of the panel members shall be chosen from the Health Care Providers profession and one (1) panel member shall be chosen from the profession of the Health Care Provider named as employer, master, or principal.

(f) Upon selection of panel members, those selected shall be communciated to the Director, along with a short professional biographical sketch of each person selected and their business telephone numbers and addresses.

RULE 10. Disqualification of Panel Members.

(a) Any panel member shall disqualify himself from consideration of any case in which, by virtue of his circumstances, he feels his presence on the panel would be inappropriate, considering the purpose of the Panel.

(b) The Director may excuse a proposed panelist from serving on the Panel.

(c) Whenever a party makes and files an affidavit that a panel member selected by these Rules cannot, according to the belief of the party making an affidavit, sit in review of the application nor review with impartiality, that panel member may proceed no further. A party may not disqualify by affidavit more than three panel members in any single malpractice claim, and any such affidavit to be effective must be filed within fifteen (15) days of the transmittal by mail to the parties by the Director of the name or names of the panel member selected in these rules who is sought to be disqualified. Nothing in these rules shall additionally be construed so as to defeat a party's right to such disqualification.

(d) To replace any panel member disqualified or excused under these rules, a replacement panel member shall be selected, pursuant to Rule 9 of these rules, within five (5) days of receipt by the professional association, state licensing board, or the State Bar of notification by the Director of the panel member disqualified or excused. Notification of replacement panel members shall be made by the Director pursuant to Rule 8 (c).

RULE 11. Medical Consultation. A claimant request for Director cooperation in retaining a consultant must be made within four weeks of filing of the application. The Director shall cooperate fully with the claimant in retaining a physician qualified in the field of medicine involved, who will consult for purposes of the panel hearing with the claimant upon payment of a reasonable fee by the claimant, which said fee shall be calculated on an hourly rate and, upon claimant's request, reviewed by the Panel. In the event the Panel determines the consulting fee charged the claimant is unreasonably high, they shall, upon vote of majority, reduce the same to a reasonable fee.

RULE 12. Time and Place of Hearing.

(a) After the application has been received, a date, time and place for the hearing shall be fixed by the Director, and prompt notice thereof shall be given by the Director to the parties involved and the members of the Panel.

(b) In no instance may the date set be more than one hundred twenty (120) days after the transmittal by the Director of the Health Care Provider of the application for review, unless the Panel, by majority vote, finds good cause exists for extending the period. Such vote may be taken by letter or telephone.

(c) Panel hearings may be held in any county the Panel considers necessary or advisable. The county commissioners or other governing authority shall provide, upon request of the Director, suitable facilities for any such hearing.

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

MARCH 13, 1985

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by chairman, Judy Jacobson on Wednesday, March 13, 1985 in Room 410 of the State Capitol at 12:30 p.m.

ROLL CALL: All members were present with the exception of Senator Lynch who arrived late. Karen Renne, staff researcher was also present.

There were many, many people in attendance. See attachments.

CONSIDERATION OF HOUSE BILL 720: Representative Jan Brown of Helena, the chief sponsor of HB 720, gave a brief resume of the bill. This bill is an act to establish an office of long-term care ombudsman within the office of the governor, to specify the powers and duties of the ombudsman; to impose certain requirements on long-term care facilities; to provide for access to and confidentiality of records; and providing an effective date.

Doug Blakely, the state ombudsman from the governor's office, stood in support of the bill. He stated that the ombudsman bill covers the operation of two advocacy programs for senior citizens, the Long-term Care Ombudsman Program and the Elderly Legal Services Developer Program. The program is currently administratively attached to the Governor's Office. Financial monitoring and overall grant monitoring is done by SRS, since they receive the federal funds for the program. Daily supervision is provided by the Board of Visitors, which is also attached to the Governor's Office. Basic duties include investigation and resolving complaints on the health, safety, welfare and rights of residents as well as cases of elder abuse, neglect or exploitation pertaining to long-term care residents; monitoring legislation, laws effecting long-term care residents; providing information to public agencies on long-term care issues; and promoting the development of citizen organizations in long-term care facilities. Mr. Blakely handed out fact sheets to the members of the Committee for their consideration. See attachments.

Molly Munro, Executive Secretary for the Montana Association of Homes for the Aging, stood in support of the bill. She stated that this bill provides that the office of long-term care ombudsman be placed in the Governor's office to give it greater autonomy. This is most necessary. Mrs. Munro handed in testimony for the Committee to consider. See attachments.

DISCUSSION ON HOUSE BILL 738: This bill is sponsored by Representative Kelly Addy, regarding the Medical Legal Panel.

Senator Himsl asked that the Committee pass consideration for the day as they were not ready to act on this bill.

ACTION ON HOUSE BILL 817: Representative Les Kitselman of Billings is the chief sponsor of HB 817 which is an act to provide health insurance coverage to certain persons ineligible for coverage from traditional providers of health care benefits by establishing a Montana Comprehensive Health Association and Plan; to require participation in the Association by each health service corporation, fraternal benefit society, and insurer providing health care benefits in this state; and providing effective dates.

A motion was made by Senator Hager to adopt the proposed amendments of the sponsor of the bill. Motion carried.

A motion was made by Senator Hager that HB 817 BE CONCURRED IN AS AMENDED. Motion carried. Senator Hager will carry this bill on the floor of the Senate.

ANNOUNCEMENTS: The next meeting of the Senate Public Health, Welfare and Safety Committee will be held on Friday, March 15, 1985 in Room 410 of the State Capitol to discuss HB 280, 358, 487, 623, and 646.

ADJOURN: With no further business the meeting was adjourned.

Judy Jacobson
SENATOR JUDY JACOBSON, CHAIRMAN

eg

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

MARCH 20, 1985

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by Chairman Judy Jacobson on Wednesday, March 20, 1985 in Room 410 of the State Capitol at 12:30.

ROLL CALL: All members were present. Senators Lynch and Newman arrived late. Karen Renne, staff researcher, was also present.

There were numerous people in attendance. See attachments.

CONSIDERATION OF HOUSE BILL 627, 665, and 686: Representative Nancy Keenan of House District 66 in Ananconda, the chief sponsor of the bills, gave a brief resume of the them. She stated that since the bills are considered a package she would like to handle the three together if that was permissible with the chairman of the Committee. Senator Jacobson stated that would be fine.

HOUSE BILL 627 is an act to specify the general duties of a guardian ad litem in cases of child abuse or neglect.

HOUSE BILL 665 is an act to revise the procedures involved in terminating the parent-child legal relationship.

HOUSE BILL 686 is an act to generally revise the procedures elating to the filing and conduct of child abuse, neglect, or dependency proceedings.

Representative Keenan stated that HB 627 simply states that the guardian ad litem in cases of child abuse does not have to be an attorney.

HB 665 is to enable people to get into court more quickly for the protection of the children.

HB 686 is a safety measure which would require the county attorney hired by the county welfare department to file petitions alleging abuse or neglect of a child. This bill would protect both the child and the parents.

Noel Larivee, an attorney in private practice from Missoula, stood in support of the three bills. He stated that HB 627 would place the guardian ad litem as the spokesman for the child and would also state that the guardian ad litem does not need to be an attorney.

Senator Towe asked if there is state funding in this bill. The funding level would be determined by the legislative appropraitions process. The level requested in the budget is $438,000 from the general fund and $100,000 in federal money.

Senator Hager stated that he felt that the group homes should be better neighbors and take care of their property better. Many times the group homes are run down.

Representative Miles closed. She stated that the people are not getting the programs that they need. She asked the Committee to give the bill favorable consideraton.

ACTION ON HOUSE BILL 738: This bill which was introduced by Representative Kelly Addy is an act revising the Montana Medical Legal Panel Act.

Senator Himsl stated that there is no control in this act. A legislative audit has been requested for the Montana Medical Legal Panel after July of 1986. Then it would be ready for the 1987 Legislature and they would have the current data.

Senator Jacobson stated that she had talked with many people from the medical profession and they would agree with Senator Himsl that a legislative audit would be in order.

Senator Himsl stated that this would be a program audit.

A motion was made by Senator Towe that HB 738 BE CONCURRED IN. Motion carried.

Senator Jacobson will carry this bill on the floor of the Senate.

ANNOUNCEMENTS: The next meeting of the Senate Public Health Committee will be held on Friday, March 22, 1985 at 12:30 in Room 410 of the State Capitol to consider HB 235, 676, 472, and 766.

ADJOURN: With no further business the meeting was adjourned.

eg

Judy Jacobson
SENATOR JUDY JACOBSON, CHAIRMAN

STANDING COMMITTEE REPORT

March 20, 19 85

MR. PRESIDENT

We, your committee on Public Health, Welfare and Safety

having had under consideration House Bill No. 738

third reading copy (blue color)

GENERALLY REVISE MEDICAL LEGAL PANEL ACT

ADDY (JACOBSON)

Respectfully report as follows: That House Bill No. 738

~~DO PASS~~

~~DO NOT PASS~~ BE CONCURRED IN

SENATOR JUDY JACOBSON, Chairman.

HOUSE BILL NO. 738

INTRODUCED BY ADDY, KEYSER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT BY CLARIFYING THE DEFINITIONS OF "HEALTH CARE FACILITY", "MALPRACTICE CLAIM", AND "PHYSICIAN"; CLARIFYING THE ALLOCATION OF ASSESSMENTS AND DETERMINATION OF ASSESSMENTS; PROVIDING FOR A LATE FEE FOR DELINQUENT ASSESSMENTS; CLARIFYING THE COMPOSITION OF THE PANEL; CLARIFYING THE TOLLING OF THE STATUTE OF LIMITATIONS AGAINST PARTIES NOT PARTIES TO THE CLAIM AND PROVIDING FOR DISMISSAL OF CLAIMS AND THE RUNNING OF THE STATUTE OF LIMITATIONS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-301, 27-6-303, 27-6-401, AND 27-6-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Health care facility" means a facility (other than a university, college, or governmental ~~hospital or~~ infirmary) licensed as a health care facility under Title 50, chapter 5.

(2) "Health care provider" means a physician or a health care facility.

(3) "Hospital" means a hospital as defined in 50-5-101.

(4) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical treatment, lack of medical treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the ~~patient~~ claimant, whether the ~~patient's~~ claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(5) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(6) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to

practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services, whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3."

Section 2. Section 27-6-206, MCA, is amended to read:

"27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers~~,-except-physicians-not~~

~~engaged-in-the-private-practice-of-medicine~~. The amount of the assessment must be annually set by the director~~,-who shall-allocate-a-projected--cost~~ and must be apportioned among physicians, hospitals, and other health care ~~facilities~~ providers by group. ~~The-amount-of-the-assessment for-an-individual-physician,-hospital,-or-other-health--care facility--must-be-that-portion-of-the-total-assessment-which bears-the-same-relationship-to-the-total-assessment--as--the number--of-claims-against-such-physician,-hospital,-or-other health-care-facility-bears-to-the--total--number--of--claims against---physicians,---hospitals,--and--other--health--care facilities-that-have-been-filed-with-the-panel--since--April 1,--1977,--as--that--total-number-of-claims-is-shown-in-the annual-reports-of-the-panel.--However,-the-assessment-for-an individual-hospital-must-also-be-determined-by-dividing--the total--percentage-of-the-assessment-for-all-hospitals-by-the total-number-of-hospital-beds-existing-at-the--time--of--the assessment--and-multiplying-the-result-by-the-number-of-beds in-the-hospital-to-be-assessed.~~ As to the group of all physicians, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined

from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of health and environmental sciences. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians' annual registration fees are due under 37-3-313. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of

commerce has under 37-3-313 in connection with physicians' annual registration fees."

Section 3. Section 27-6-301, MCA, is amended to read:

"27-6-301. How cases submitted. Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the ~~patient~~ claimant or his attorney, to the director of the panel."

Section 4. Section 27-6-303, MCA, is amended to read:

"27-6-303. Amendments to application. ~~Any--amendments~~ Amendments to the application ~~must~~ may be ~~filed-not-less than-14-days-prior-to-the-hearing-date~~ authorized by rule."

Section 5. Section 27-6-401, MCA, is amended to read:

"27-6-401. Composition of panel. (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. Six panel members shall sit in review of each case. Three panel members ~~from--the--health care--provider's--profession~~ who are physicians and three panel members ~~from-the-state-bar~~ who are attorneys shall sit in review of each case in which the claim is heard only against one or more physicians. If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health

care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.

(2) In ~~those~~ all other cases ~~where--the--theory--of respondeat--superior--or--some--other--derivative--theory-of recovery-is-employed~~, two of the panel members ~~shall~~ must be ~~chosen-from-the-individual-health-care-provider's-profession~~ and physicians, one panel member ~~shall~~ must be ~~chosen--from the--profession--of--the~~ an administrator of ~~one-of~~ the SAME TYPE OF health care ~~provider-named-a-respondent-as-employer, master,-or-principal facilities~~ FACILITY, and three panel members must be attorneys."

Section 6. Section 27-6-702, MCA, is amended to read:

"27-6-702. Tolling of statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review ~~and~~ as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action which might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period in a malpractice claim does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel chairman, or from the

director upon the consent of the parties to the claim, or the panel's final decision, whichever occurs first, is entered in the permanent files of the panel and a copy is served upon the complainant ~~and~~ OR his attorney if he is represented by counsel, by certified mail."

NEW SECTION. Section 7. Effective date. This act is effective on passage and approval.

-End-